

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HIEU TRINH & MAI-HOUNG TRAN, VC 2010-BR-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 9610 Jenny La. on approx. 11,486 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-3 ((18)) 4 (Concurrent with SP 2010-BR-035). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2010; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the property.
2. The applicants have satisfied the nine required standards for variance applications.
3. This patio has existed for quite some time and appears to have been installed at no fault of the property owners.
4. It appears, based on the testimony, this is a large house allowed to be constructed in a PDH-3 category.
5. The way that the house is sited on the property, it results in a relatively small backyard compared to the rest of the property.
6. Functionally, the percentage in excess of the 30% rear yard requirement does not require a lot of square feet because of the way the minimum rear yard is required.
7. The rest of the house has a good deal of screening and lacks impervious surface, which helps counterbalance any excess coverage.
8. The building permit in 1998 may have inadvertently permitted the installation of that yard, in particular where it indicates the 832.35 square feet of additional impervious surface.
9. This is the old variance application form. I think the standard we apply now is a little less stringent under the Code than that set forth in this particular application.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for greater than 30 percent minimum rear yard coverage for the deck (slate patio) as shown on the plat prepared by Scartz Surveys, dated February 17, 2010, revised through July 6, 2010, submitted with this application and is not transferable to other land.
2. Notwithstanding what is shown on the plat, the little patio in the upper right of the plat shall be removed.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.